IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4653 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

SMITA S PATEL

Appearance:

1. First Appeal No. 4653 of 2001
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
MR PM VIN for Respondent No. 1
NOTICE SERVED BY DS for Respondents No. 2-5

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 18/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Heard the learned Counsel for the respective parties. Appeal admitted. Mr. P.M.Vin appears for the respondent Nos.1 and 2 (original claimants) and waives service of notice in the appeal. Respondent Nos. 3,4 and 5 are already served with the notice of this appeal.

2. On a joint request of learned Counsel, this appeal is taken up for final hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, challenging the judgment and award passed by the Motor Accident Claims Tribunal, Bharuch, below Ex.8 in Motor Accident Claim Petition No. 973 of 1999, being an award passed under section 163-A of the said Act.

4. It is pertinent to note that the said award has been passed below application Ex.8 to award interim compensation under Sec.163-A of the Act filed in Motor Accident Claim Petition No.973 of 1999 under Section 166 of the said Act which is yet pending.

5. Learned counsel for the appellant contends that the Tribunal has erred in law in treating the said Claim Petition under section 163-A as a claim of an interim nature, and has dealt with it in a manner similar to a claim under section 140 of the said Act. It was contended that on account of this approach on the part of the Tribunal, the appellant Insurance Company had no opportunity of leading appropriate evidence and/or meeting the contentions of the original claimants in these proceedings under section 163-A. According to the learned counsel for the appellant, the law as laid down by the Supreme Court does not permit the claimants to pursue a claim under section 163-A of the Act, whether by way of an interim application or even by way of a final decision, as long as the main claim under section 166 of the said Act is pending adjudication. In other words, learned counsel for the appellant contends that the claims filed under section 163-A and section 166 of the said Act are in the nature of alternative remedies, and only one of such remedies can be pursued, whereas the two remedies cannot be pursued simultaneously or in succession. We are obliged to accept this contention on the part of the learned counsel for the appellant in view of the clear decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala and others, reported in JT 2001(4) SC 477. It is,

therefore, obvious that on the facts of the case, since the main claim petition under section 166 of the Act is pending, the Tribunal had no jurisdiction either to entertain or to decide a claim under section 163-A of the said Act. In the premises aforesaid, the impugned award under section 163-A is required to be quashed and set aside. We hold and direct accordingly.

6. The facts of the case, however, require further directions to be given in respect of a sum of Rs.25,000/- which has been deposited by the appellant in this Court at the time of filing of this appeal, and therefore, the office is directed to transmit a sum of Rs.25,000/- deposited by the appellant in this Court to the Tribunal forthwith.

7. In view of the fact that the impugned award under section 163-A has been quashed and set aside, it would normally follow that the appellant Insurance Company would be entitled to restoration of the status quo ante. However, we are mindful of the fact that the main claim under section 166 is yet pending adjudication and are also mindful of the fact that in such a claim petition, it is always open to the claimants to prefer an application under section 140 of the said Act.

8. In the premises aforesaid, and on the facts of the case, we hold by consensus between the learned counsel for the parties that it would be open to the respondents -original claimants to prefer an application under section 140 in the claim petition, now pending under section 166 of the said Act.

9. However, we are also conscious that in case of a fatality from which the main claim petition arose, the maximum the Tribunal could award under section 140 would be Rs.50,000/-. It would, therefore, be appropriate to direct that it shall be open to the appellant Insurance Company to apply to the Tribunal to liquidate and/or release the investment made by the Tribunal by way of a fixed deposit with a nationalised bank and to claim a refund thereof. If and when such an application is made, the Tribunal shall ordinarily grant the same.

10. It is clarified that a sum of Rs.50,000/- which shall remain as a deposit with the Tribunal, shall, for the present, not to be disbursed and shall be adjusted against the amount that may be awarded by the Tribunal on the adjudication of the claimants' application under section 140 of the said Act, and if necessary, adjusted

against the final award under section 168 of the said Act.

11. However, this direction as to retention by the claimants of the amount already disbursed, shall be subject to the claimants filing an undertaking before the Tribunal to the effect that the claimants shall pursue the main claim petition under section 166 of the Act, and obtain an adjudication thereon, on merits and in accordance with law, and that they shall not permit this application to be withdrawn or dismissed for default, or be disposed of in any other manner, and that the amount of 30% disbursed in favour of the applicants shall be adjusted in the final award under section 168. If such an undertaking is not filed along with an application under section 140 of the said Act, it shall be open to the appellant Insurance Company to apply to the Tribunal for restitution of the amount already disbursed in favour of the original claimants.

12. This appeal is, therefore, allowed to the aforesaid extent with no order as to costs. Decree accordingly.

13. It requires to be noted that on the facts and circumstances noted hereinabove and in view of the directions consequently issued, it would be appropriate for the Tribunal to expedite the hearing of the main claim petition under section 166 of the said Act, and to dispose of the same as early as possible in consonance with the date of its filing and the workload before the tribunal.

14. It is submitted by the learned Counsel for the appellant that the appellant has filed Misc. Civil Application No. 918 of 2001 and 919 of 2001 for transfer of the main Motor Accident Claim Petition filed by the parents of the deceased in Motor Accident Claims Tribunal, Sabarkantha to Motor Accident Claims Tribunal, Bharuch or to transfer Claim petition filed by heirs of the deceased in Motor Accident Claims Tribunal at Sabarkantha which are still pending. We clarify that this order shall be subject to the result of Misc. Civil Application No. 918 of 2001 and 919 of 2001.

Date: 18/12/2001. -----
ccshah